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# Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGRE-00 AID-05
CEA-01 CEQ-01 CG-00 CIAE-00 EPG-02 COME-00
DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01
TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03 NSAE-00
NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01
SP-02 SS-15 USIA-06 AF-10 ARA-10 EA-07 EUR-12
NEA-10 /162 W
----------118404 290058Z /63
R 282333Z JUN 77
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 4258

C O N F I D E N T I A L SECTION 1 OF 2 USUN 2076

FROM LOS DEL

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS SITREP JUNE 27, 1977

1. COMMITTEE I. IN TWO SESSIONS, THE COMMITTEE COMPLETED DISCUSSION OF DRAFT TEXTS DEALING WITH THE ENTERPRISE AND VARIOUS SPECIALIZED COMMISSIONS (TECHNICAL, ECONOMIC, RULES AND REGULATIONS). ON THE ENTERPRISE, POLAND, SUPPORTED BY KUWAIT, USSR, GAMBIA, MONGOLIA, GDR, LIBYA, AUSTRIA AND NEW ZEALAND, URGED THAT SEABED MINING COUNTRIES BEAR THE MAJOR FINANCING BURDEN FOR START-UP COST OF THE ENTERPRISE. ARGUING THE CASE FOR PROPORTIONAL PAYMENTS BY ALL STATES ACCORDING TO THE UN SCALE OF ASSESSMENT, WERE UK, US, FRG, AND NETHERLANDS.

2. ON PRIVILEGES AND IMMUNITIES FOR THE ENTERPRISE, CHILE PROPOSED AN AMENDMENT TO ANNEX II, PARA.(E) WHICH WOULD RESTRICT EXEMPTIONS TO NONCOMMERCIAL ASPECTS OF ENTERPRISE OPERATIONS AND INSURE NONDISCRIMINATORY TREAT-
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MENT OF COMMERCIAL ACTIVITIES OF THE ENTERPRISE. INDIA ALSO SUGGESTED THAT SPECIAL PRIVILEGES GRANTED TO THE ENTERPRISE IN THE TREATY SHOULD BE CONDITIONED ON "RESPECT OF LOCAL LAW." THE US (DARMAN), WHILE REITERATING OUR OBJECTION TO GRANTING THE ENTERPRISE PRIVILEGED LEGAL AND TAX STATUS, EXPRESSED INTEREST IN THE CHILEAN AND INDIAN SUGGESTIONS.

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3. MEANWHILE, THE US PARTICIPATED IN CONTINUING TECH-
NICAL LEVEL DISCUSSIONS ON FINANCIAL ARRANGEMENTS AND
PRODUCTION CONTROLS. JOHN BAILEY (AUSTRALIA), WHO
HEADS THE FINANCIAL ARRANGEMENTS GROUP, WAS PREPARING
TO RELEASE HIS OWN SUGGESTED TEXT FOR ANNEX I, PARA. 9
(FINANCIAL ARRANGEMENTS) ON JUNE 28. DISCUSSIONS TO
DATE HAVE FOCUSSED ON THE INDIAN AND US PROPOSALS.
BAILEY'S DRAFT IS EXPECTED TO PURSUE A MIXED APPROACH
COMBINING FEES, MINING CHARGES, ROYALTIES
AND PROFIT SHARING. BAILEY PLANS TO PROVIDE ENGO
WITH A FINAL DRAFT BY JULY 1.

4. REGARDING PRODUCTION CONTROL, CHRIS PINTO (SRI LANKA)
IS CHAIRING A TECHNICAL GROUP WHICH HAS SOUGHT TO INTER-
PRET THE EVENSEN TEXT OF ARTICLE 9.2 AND RECOMMEND TECH-
NICAL IMPROVEMENTS. PINTO, ALONG WITH A NUMBER OF OTHER
NON-MATHEMATICAL MINDS PARTICIPATING IN THE MEETING,
HAVE BEEN DAZZLED (OR DAZED) BY THE STATISTICAL
WIZARDRY OF SOME OF THE DELEGATES. THE ONE CONCRETE
AGREEMENT REACHED IN THE TECHNICAL GROUP WAS TO APPLY
THE "LEAST SQUARESMETHOD" IN DETERMINING THE CONSTANT
ANNUAL PERCENTAGE RATE INCREASE IN WORLD NICKEL DEMAND
DURING A HISTORICAL PERIOD, AND TO USE SUCH TREND DATA TO
PROJECT DEMAND FROM A GIVEN BASE YEAR. THE US, INDIA,
AND NETHERLANDS ARE AGREED ON USING A 20-YEAR GROWTH
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TREND, BUT CANADA HAS STRONGLY FAVORED 10 YEARS. CHILE
AND PAPUA NEW GUINEA, WHILE PROBABLY SYMPATHETIC TO
CANADA, HAVE NOT ACTIVELY SUPPORTED THE LATTER. SIMILAR-
LY, CANADA FAVORS STARTING THE INTERIM PERIOD AT THE
COMMENCEMENT OF COMMERCIAL SEABED PRODUCTION, RATHER
THAN ON A FIXED DATE (E.G., 1980, AS IN EVENSEN'S TEXT).

5. COMMITTEE II. COMMITTEE II RESUMED ITS PLENARY
SESSION ON "MISCELLANEOUS MATTERS" THIS MORNING. THE
FIRST ITEM OF DISCUSSION WAS A PROPOSAL BY AFGHANISTAN
WHICH WOULD SUBSTANTIALLY REVISE SECTION II, CHAPTER V
OF THE RSNT (MANAGEMENT AND CONSERVATION OF LIVING RE-
SOURCES OF THE HIGH SEAS). AMENDMENTS WERE PROPOSED TO
ARTICLE 104 TO 108, THE EFFECT OF WHICH WOULD BE TO GRANT
JURISDICTION TO THE INTERNATIONAL SEABED AUTHORITY (ISA)
OVER THE MANAGEMENT AND CONSERVATION OF THE LIVING RE-
SOURCES OF THE HIGH SEAS. PERU WAS THE ONLY STATE TO
INTERVENE ON THIS PROPOSAL AND WAS OPPOSED TO THE SUG-
GESTED AMENDMENT. AFGHANISTAN PROPOSED A SERIES OF
AMENDMENTS TO ARTICLES 109 THROUGH 117. THE BASIC
PROPOSAL OF AFGHANISTAN WAS THAT OF THE LANDLOCKED STATES
PRESENTED DURING THE LAST SESSION. THAT POSITION HOLDS

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THAT THE RIGHT OF FREE TRANSIT AND ACCESS BY LL STATES TO THE HIGH SEAS IS AN INHERENT AND INDIVISIBLE RIGHT NOT CONTINGENT UPON RECIPROCITY FOR ITS VALIDITY AND EXERCISE. SEVERAL STATES, INCLUDING PAKISTAN AND ROMANIA, COUNTERED THE AFGHAN PROPOSAL BY SUGGESTING MINOR MODIFICATIONS TO ARTICLE 110 WHICH ASSERTED THE UNDILUTED SOVEREIGNTY OF THE TRANSIT STATE OVER PASSAGE THROUGH ITS TERRITORY.

6. THE PHILIPPINES INTRODUCED LENGTHY, SUBSTANTIVE AMENDMENTS TO VARIOUS ARTICLES OF CHAPTER VII (ARCHIPELAGIC STATES) WHICH COULD IMPACT SEVERELY UPON THE RIGHTS OF NAVIGATION THROUGH AND OVERFLIGHT OVER ARCHIPELAGIC WATERS. (TEXT OF AMENDMENTS POUCHED.)
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7. ECUADOR SUGGESTED THE INCLUSION OF AN ARTICLE 127 BIS, ARCHIPELAGOS WHICH ARE AN INTEGRAL PART OF THE TERRITORY OF A COASTAL STATE. THIS AMENDMENT READS: QUOTE. THE DETERMINATION OF THE TERRITORIAL SEA, THE CONTIGUOUS ZONE, THE EXCLUSIVE ECONOMIC ZONE AND THE CONTINENTAL SHELF OF A GROUP OF ISLANDS FORMING PART OF THE TERRITORY OF A STATE, WHICH ACCORDING TO PARAGRAPH (B) OF ARTICLE 118 CONSTITUTE AN ARCHIPELAGO, SHALL BE MADE BY DRAWING STRAIGHT BASE LINES JOINING THE OUTERMOST POINTS OF THE OUTERMOST ISLANDS AND DRYING REEFS UNQUOTE. TEN STATES SUPPORTED THIS AMENDMENT; 19 STATES OPPOSED IT.

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SP-02 SS-15 USIA-06 AF-10 ARA-10 EA-07 EUR-12
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FROM LOS DEL

8. DURING THE AFTERNOON SESSION, ROMANIA PROPOSED AN AMENDMENT TO ARTICLE 128, PART II ON THE REGIME OF ISLANDS. THE SUGGESTED REVISION WAS CO-SPONSORED BY ALGERIA, IRAQ, IRELAND, LIBYA, MADAGASCAR, NICARAGUA, TURKEY, CAMEROON, AND YEMEN. THE PROPOSAL INCLUDES A NEW PARAGRAPH (4) TO ARTICLE 128 WHICH READS:
QUOTE. ISLANDS WHICH ARE SITUATED ON THE CONTINENTAL SHELF OR EXCLUSIVE ECONOMIC ZONE OF ANOTHER STATE, OR WHICH ON THE BASIS OF THEIR GEOGRAPHICAL LOCATION AFFECT THE NORMAL CONTINENTAL SHELF OR EXCLUSIVE ECONOMIC ZONE OF OTHER STATES SHALL HAVE NO ECONOMIC ZONE OR CONTINENTAL SHELF OF THEIR OWN. UNQUOTE. THIS PROPOSAL WAS ATTACKED ON THE BASIS THAT: A) IT DISCRIMINATES AGAINST ISLAND STATES AND THUS CONTRAVENES THE GENERAL PRINCIPLE OF SOVEREIGN EQUALITY AMONG ALL STATES, AND B) IT ASSUMED THE FALSE PREMISE THAT ISLAND STATES ARE, IPSO FACTO, SITUATED ON THE CONTINTENTAL SHELVES OF OTHER STATES. FIFTEEN STATES SUPPORTED THIS PROPOSED AMENDMENT AND 21 OPPOSED IT.
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9. DISCUSSIONS ALSO BEGAN ON AMENDMENTS PROPOSED ON ARTICLES OF CHAPTER IX OF THE RSNT. PART II (ENCLOSED AND SEMI-ENCLOSED SEAS). THE AMENDMENTS WERE SPONSORED BY YUGOSLAVIA, ALGERIA, LIBYA, ROMANIA AND TURKEY. IN ARTICLE 129, ALL REFERENCE TO "ENCLOSED SEAS" WAS DELETED FROM THE CHAPTER; IN ARTICLE 130, "AGREEMENT" AMONG INTERESTED PARTIES WAS ADDED AS A FORM OF COOPERATION. NEW ARTICLES 131 AND 132 WERE ADDED TO THE PROVISIONS OF THE CHAPTER DEALING RESPECTIVELY WITH DELIMITATION OF TERRITORIAL SEAS, ECONOMIC ZONES, AND CONTINENTAL SHELVES IN SEMI-ENCLOSED SEAS AND NAVIGATION THROUGH OUTLETS CONNECTING SEMI-ENCLOSED SEAS WITH OTHER MARITIME ZONES. THE LATTER PROVISION ADDRESSED THE RIGHT OF UNIMPEDED PASSAGE IN RESPECT TO NAVIGATION AND OVERFLIGHT. SEVERAL INTERVENTIONS WERE MADE IN SUPPORT OF THE GENERAL PRINCIPLES CONTAINED IN THE PROPOSED AMENDMENTS, ESPECIALLY THE PROPOSED ARTICLES 130 AND 132. SOME DELEGATIONS, HOWEVER, VOICED THEIR SUPPORT FOR THE RSNT AND/OR FOR AMENDMENTS OF FINLAND AND THE GDR, PROPOSED DURING PREVIOUS SESSIONS. DISCUSSION OF THESE

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AMENDMENTS RESUMES TOMORROW.

10. COMMITTEE III. PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT. THE INFORMAL WORKING GROUP UNDER CHAIRMAN VALLARTA (MEXICO) BEGAN DISCUSSION OF ARTICLE 21(5) (SPECIAL AREAS). INDIA PROPOSED AMENDMENTS TO THE TEXT INFORMALLY AGREED AT THE LAST SESSION, TO MAKE CLEAR THAT ADDITIONAL LAWS RELATING TO DISCHARGES AND NAVIGATIONAL PRACTICES COULD BE APPROVED BY IMCO AT THE SAME TIME AS OTHER SPECIAL AREA RULES FOR THE PREVENTION OF POLLUTION.

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11. AN APPARENT COMPROMISE DISAPPEARED AFTER THE INDIA DELEGATE CONFERRED WITH HIS DELEGATION. TANZANIA, SOMALIA AND CHINA REJECTED LAST SESSION'S TEXT BECAUSE IT REQUIRED THAT SPECIAL AREAS BE APPROVED BY IMCO AND KENYA AND PAKISTAN GENERALLY RESERVED THEIR POSITIONS.

12. DISCUSSION BEGAN ON ART. 38 (FLAG STATE PREEMPTION) WITH FRANCE AND THE FRG PROPOSING AMENDMENTS INCREASING THE CASES IN WHICH FLAG STATES COULD PREEMPT COASTAL AND PORT STATE PROCEEDINGS FOR POLLUTION VIOLATIONS. THE FRENCH AMENDMENT WOULD ALLOW PREEMPTION EVEN FOR FLAG STATES WHICH HAD REPEATEDLY DISREGARDED ITS ENFORCEMENT OBLIGATIONS. THE FRG AMENDMENT WOULD ALLOW PREEMPTION EVEN IN CASES OF MAJOR DAMAGE TO THE STATE INSTITUTING PROCEEDINGS. THESE AMENDMENTS WERE SUPPORTED ONLY BY IRAQ AND WERE OPPOSED BY THE US, CANADA AND MANY DEVELOPING STATES.
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# Message Attributes

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